IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Hari Kishan & Ors. Vs. State of Rajasthan
S.B. CR. REVISION PETITION NO.368/2006

Against order dated 07.10.2006 passed by Addl. Sessions Judge, Sojat, District Pali in Criminal Original Case No.01/06 (State Vs. Hari Kishan & Ors.).

DATE OF ORDER :: 10th November, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. Suresh Kumbhat for petitioners.
Mr. Vishnu Kachhawaha, Public Prosecutor.

BY THE COURT:

In this petition, challenge has been made to the order dated 07.10.2006 passed by Addl. Sessions Judge, Sojat, District Pali in Criminal Original Case No.01/06 (State Vs. Hari Kishan & Ors.), whereby charges under Sec.447, 435, 323 and 307/34 of the IPC have been framed against the petitioners.

Out of the three petitioners, petitioner Hari Kishan has already expired and now only other two petitioners are pursuing the revision petition.

At the request of learned counsel for the parties, the matter was heard finally.

Briefly stated, on a report made by complainant Vachna Ram on 03.10.2005 at Police Station, Shivpura, stating inter-alia that at about 3 AM when he along with his brother was loading crop in the tractor trolley at their agricultural field, accused petitioners came there in a jeep and picking up iron rods from the jeep trolley started beating them. On their raising cries, persons from neighbourhood came there, intervened and saved them. The police, on completion of investigation, submitted chargesheet against the accused petitioners for offence under Sec.447, 325, 323 and 307/34 IPC and thereafter the learned trial Court took cognizance against the petitioners for the said offences and framed charges. Hence, this revision petition has been filed.

The contention of the learned counsel for the petitioners is that prima facie no ingredients of Sec.307 of the Indian Penal Code are available in the present case. It has also been submitted that for an offence under Sec.307 IPC, the necessary aspect of the matter is the intention part and that is completely missing in this case. It has also been submitted that the injuries sustained are all simple except one on the person of injured Vachana Ram and that is fracture of metacarpal bone.

On the other hand, learned Public Prosecutor has supported the order passed by the learned trial Court.

I have considered the submissions made before me.

In the case of Ajay Kumar & Ors. Vs. State of Rajasthan [2003 (1) Cr.L.R. (Raj.) 211], when on perusal of injury report, it was found that injuries were not fatal in nature and the blows given on the person of the injured were by 'Dandas', the Court held that it was not a case where charge under Sec.307 could be framed.

In the case of Man Mohan & Ors. Vs. State of Rajasthan [2006(2) Cr.L.R. (Raj.) 1408], it has been held that when it appears that injuries sustained are not sufficient in the ordinary course of nature to cause death and intention part is also missing then order of framing charge for the offence under Sec.307 IPC is liable to be set aside.

In yet another case, Chhagan & Ors. Vs. State of Rajasthan [2006 (3) CJ (Raj.) Cr. 1067], it has been held that prima facie when there is no evidence that injuries were caused with the intention to cause death then in those circumstances charge under Sec.307 of the IPC is required to be set aside.

The facts of the present case and injury reports available on file indicate that all injuries caused to the injured persons are simple in nature except one on the person of complainant injured Vachana Ram.

In this case, Ganesh Ram s/o Gheesa Ram sustained four injuries. One is lacerated wound on head

caused by blunt weapon. Other lacerated reddish injury 1" x 2" x 5 mm deep is also simple. Rest two injuries are minor abrasions. In relation to head injury, it has been opined in the x-ray report that no bony injury was seen and injuries were not threaten to life. Thus, the injuries found on the person of Ganesh Ram s/o Gheesa Ram were simple in nature.

Another injured of the case is Vachana Ram. He sustained bruises and one lacerated wound. All injuries are simple in nature except injury No.2 which is a bruise and that fractured the metacarpal bone.

After carefully considering the entire case, injury reports and the manner in which the incident has taken place, it nowhere suggests that the petitioners had the intention to cause or inflict such bodily injury which can be termed sufficient in the ordinary course of nature to cause death. Thus, the trial Court committed illegality in framing charge under Sec.307/34 against the petitioners and the revision petition, therefore, requires to be accepted and the accused are liable to be discharged of the offence under

Sec.307/34 of IPC and are only liable to be tried for rest of the offences viz., Sec. 447, 325, 325/34 and 323 of the IPC.

Accordingly, the revision petition is partly accepted and the accused petitioners are discharged of the offence under Sec.307/34 of the IPC. Now the case against the remaining two petitioners shall be tried by the competent Court only for rest of the offences.

The revision petition stands disposed of accordingly.

(SATYA PRAKASH PATHAK) J.

/jpa